SUCCESSION: EFFECT OF FELONIOUS KILLING OF ANCESTOR BY HEIR.—English judges, though in practice their tenure is during good behavior, are theoretically subject to recall by Parliament without a hearing,[1] while judges in the United States are generally irremovable, save by the process of trial and impeachment. Again, the English judges have no power to declare an act of Parliament invalid while American judges not infrequently exercise this power in the case of legislative acts, conflicting with state or federal constitutions. It is, therefore, somewhat surprising to find that English courts are often ready to interpret statutes with more flexibility than are the courts of our own country.

A comparison of two decisions made only a month apart and dealing with the same subject, one by an English court and the other by the Oklahoma Supreme Court, calls attention to the greater field which the English judges allow to interpretation. The question in each case was whether one who feloniously kills another is entitled to succeed to the latter's estate, either under intestate laws or under a will. The Oklahoma Court, in Holloway v. McCormick,[2] said, yes. The laws of succession are established by the legislature and they admit of no exceptions. The English Court of Appeals, in Hall v. Knight,[3] said emphatically, no. "The human mind revolts at the very idea that any other doctrine could be possible in our system of jurisprudence."[4]

The English Court in the case referred to extends the doctrine of earlier cases where the claimant was a murderer to the situation where the crime is manslaughter. The decision rests upon the theory that public policy forbids the succession, where any felonious act on the part of the claimant to the succession has caused the death. It is not essential that the killing be for the purpose of succeeding to the estate.[5] Nor does the court admit that the legal title would pass to the slayer, subject to a trust in favor of the next of kin.[6] The judges of the Court of Appeal believe that Parliament must have intended that its statutes were to be read in the light of the "rule of reason," and imply an exception which is not written.

A learned writer calls the treatment of this question which the English Courts have adopted, an example of "spurious in-

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[1] Encyc. Brit., Judges, Vol. XV. p. 538

[2] (Nov., 1913) 136 Pac. 1111. The view expressed by the Oklahoma Court is probably in accord with the weight of American authority. Matter of Kuhn, (1904) 125 Iowa 449, 101 N. W. 151, 2 Ann. Cas. 657.

[3] (Oct., 1913) 109 Law Times, 587 (C. A.) See also Perry v. Strawbridge, (1908) 209 Mo. 621, 108 S. W. 641, 14 Ann. Cas. 92.

[4] In re Crippen, (1911) Probate 108, 112.

[5] Mr. F. F. Thomas, Jr. in 1 Cal. Law Rev. 409, suggests that the exclusion of the devisee should extend only to cases where the killing is for the purpose of obtaining the devise.

[6] Professor Ames, 36 Am. Law Rev. N. S. 225.

terpretation."[7] It may be doubted, however, whether the criticism is wholly merited. In California, it is very plain that for a court to decide as did the English Court that the crime of killing, though not amounting to murder, deprived the slayer of his right to succeed, would not be interpretation at all, for our statute expressly mentions murderers only and provides that they shall not succeed[8] to the estate of the person murdered. The Supreme Court of California has, therefore, been forced to hold that the legislature did not intend to exclude from succession those guilty of homicide of a less degree of turpitude.[9] But where the statute is silent, it is not apparent why courts should not read it in the light of broad principles of justice. The whole history of equity is the history of the application of such principles to situations which the strict rules of law made intolerable. Now that the law has absorbed equity, it would seem that the English Court's method of dealing with the question is better than that adopted by the Oklahoma Court, or even than that suggested by Professor Ames.

O. K. M.

TORTS: CIVIL RESPONSIBILITY FOR ACCIDENTAL INJURY.—From the early common law down to the present time the law concerning civil responsibility for accidental injury to another's person or property has undergone a great many changes. The more marked and rapid development has, of course, come through the legislature rather than through the courts. In fact, the courts have shown a decided reluctance to impose any liabilities on any ground other than a delictual or quasi-delictual one. Nahl v. Alta Irrigation District et al[1] is but one of a long line of cases that show this attitude. The fact that a thing under the care of or owned by the defendant is the instrumentality which occasions the damage is given little or no consideration in determining his liability,—the question is, how has the defendant conducted himself personally? In short, one assumes very little responsibility by virtue of his ownership of almost any kind of property, except as concerns a blameworthy conduct in the handling of the property.

This position is explained at length and supported by Mr. Justice Holmes.[2]

Mr. Mignault, of Montreal, on the other hand, takes a broader point of view and shows that the more liberal principles applied in France compare very favorably with the English and American

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[7] Professor Pound, 7 Col. L. R., at p. 382.

[8] Civil Code, Cal. sec. 1409. It should be noted that the statute applies only to the case of succession, and does not mention wills.

[9] In re Kirby's Estate, (1912) 162 Cal. 91, 121 Pac. 370.

[1] 17 Cal. App. Dec. 634, (Nov. 22, 1913.)

[2] The Common Law, by O. W. Holmes, Jr., Chapter III, "Torts, Trepass and Negligence," pp. 77-129.